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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962.

HARRISON-HALSTED COMMUNITY GROUP, INC., et al.,

Petitioners,

vs.

HOUSING AND HOME FINANCE AGENCY, et al.,

Respondents.

REPLY BRIEF OF PETITIONERS.

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The Related State Cases Are Now Before This Court on Appeal.

The related state-court proceedings referred to in the Petition (pp. 10-11) are now before this Court on appeal, *Guillermo Gonzalez, et al.*, v. *City of Chicago*, No. 984 on this Court's current docket. The Jurisdictional Statement was filed April 3, 1963; appellee's motion is expected momentarily, and appellants will file their reply brief promptly thereafter. Hence, no appreciable delay will result if this Court defers consideration of the present Petition until the related state-court appeal is also ready for consideration. In view of the close interrelationship of the federal and state cases, raising *inter alia* the question of whether these petitioners' rights may best be vindicated in a federal or a state forum, it is again respectfully suggested that this Court should consider these two cases together.

The Brief of the Solicitor General.

1. "Practical Considerations."

The Solicitor General admits that the Amended Complaint adequately alleges that respondents have violated the Housing Act (pp. 4-5), thereby injuring petitioners (p. 6). He admits that at least some of the Housing Act provisions relied on by petitioners were enacted for their particular benefit (pp. 9-10, 13). He admits that the question of standing to assert violations of the Housing Act is of great importance both to the government and to the private parties affected (p. 15); that the standing question is presented in a novel context (p. 7); and that in at least some respects the decision on standing by the Seventh Circuit here conflicts with that of the Second Circuit in *Gart* v. *Cole*, 263 F.2d 244 (C.A.2, 1959), cert. den. 359 U.S. 978 (1959) (pp. 11-13).

Nevertheless, the Solicitor General urges this Court (p. 17) to deny petitioners relief, *inter alia*, because of "practical considerations"—because "commitments have been made"; because "3 million dollars have already been expended"; because most of petitioners' claims "have been mooted by the march of events."

Now, in the first place, the Solicitor General exaggerates the degree of irreversible change which has already taken place. The challenged projects are not "already nearing completion" (p. 6). No University construction has begun. Of the three tracts involved, Harrison-Halsted was already largely cleared at the time this controversy arose; some additional clearance has taken place, but Hull-House still stands, as does the brand-new Holy Guardian Angel School (Appx. 4a, 7a), as also does the building owned by two of the appellants in the related state-court appeal. In the Roosevelt-Blue

Island Tract, demolition has begun only in one corner of the area, and most of the homes and places of business of the petitioners who live and work there can still be saved. In the Congress-Racine Tract, which petitioners have alleged is the best part of the project area (Appx. 6a), property acquisition has not even begun. Thus the "march of events" has not yet destroyed the greater part of what petitioners seek to preserve, and this Court can indeed grant them "practical relief".

And what if it were otherwise? What if only a single petitioner kept up the battle, if only a single petitioner's home remained standing? Would not his rights still be as much entitled to protection as the rights of all were originally?

As for any "confusion and disorder" that may ensue if this Court grants certiorari, or any (unspecified) economic injury to (unspecified) "innocent third parties", the responsibility for this falls squarely on respondents, who knowingly elected to follow a course virtually guaranteed to produce litigation, and not on petitioners, who have been diligent in seeking relief from respondents' illegal acts at every level (Appx. 1a), including this one.

Furthermore, what is the authority of the Solicitor General for asserting (p. 17) that it is "very doubtful" that petitioners could prevail on the merits? Can he so certainly predict that this Court would agree with the Seventh Circuit rather than the Second on the issue of standing? And on what basis does he ask this Court to presume that petitioners could not prove the detailed allegations of their Amended Complaint, which concededly add up to violations of the Housing Act?

Petitioners submit that this argument of the Solicitor General boils down to nothing more than "reasons of

state". He seems to have forgotten for the moment that in our legal system, vindication of individual rights is a higher interest—and has more to do with public education—than the bricks and mortar of a university.[1]

2. The Joinder of State and Federal Agencies.

At two places in his brief (pp. 13, 16), the Solicitor General indicates that he finds some confusion in the joinder of state and federal agencies as defendants in this action. But there is nothing to be confused about. Except for Counts I and IX (the latter not here at issue), each count of the Amended Complaint charges that the local agencies violated specified provisions of the Housing Act and regulations by certain specified actions, and that the federal Administrator subsequently violated the Act by approving the actions of the local agencies and granting them a federal subsidy in face of their violations, which were called to his attention by petitioners. Count I charges that the local agencies and the federal Administrator jointly violated the Act by agreeing to make illegal modifications in the original duly adopted Harrison-Halsted Redevelopment Plan.

Petitioners reiterate what they said in the Petition (p. 34) about the suitability of the present record for review. As for the Solicitor General's remarks at the end of page 16 of his brief, petitioners had always understood that "circumspection" was a virtue, and that nothing was "too subtle for judicial cognizance" while this Court sits.

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[1] The involvement of the University of Illinois here in no way makes this case unique; universities are major urban renewal redevelopers. See e.g., **Boro Hall Corp. v. Impellitteri**, 120 N.E. 2d 847 (N.Y. 1954) **Bleecker Luncheonette v. Wagner**, 143 N.Y.S. 2d 628 (App. Div. 1958); **Edens v. City of Columbia**, 91 S.E. 2d 280 (S.C. 1956); **Gart v. Cole**, 262 F.2d 244 (C.A. 2, 1959); **Griggs v. Borough of Princeton**, 162 A.2d 862 (N.J. 1960); **Kintzele v. City of St. Louis**, 347 S.W.2d 695 (Mo. 1961).

3. Petitioners' Standing under the Housing Act.

In his brief (pp. 7-14), the Solicitor General abandons the Court of Appeals' blunderbuss approach to the standing question; instead, he divides petitioners' Housing Act claims into several categories, and seeks to dispose of the standing question as to each category separately. Petitioners propose to show why the Solicitor General is mistaken as do each of their claims. In any event, the fine distinctions he is forced to invent in order to avoid a conflict between circuits, the lengths to which he is forced to stretch prior decisions of this Court, combined with the admitted novelty and importance of the issues presented, all argue for, not against, the granting of certiorari.

General Plan. The Solicitor General seeks to dispose of petitioners' general plan claims (Petition p. 9) under the rubric that one may complain of the violation of a particular statutory requirement[1] only if he is particularly affected by such violation, and if the requirement was designed for the protection of a distinct class to which he belongs.

Petitioners acknowledge the principle (Petition pp. 17-20), but deny that their general plan claims fall within it (p. 16). They think they discern in this provision of the Act an intent to protect not merely or primarily the community at large, but residents of present or prospective urban renewal areas, and particularly those who may rely on an officially adopted general plan when lo-

[1] It is clear that the Solicitor General concedes that all of the Housing Act provisions in question are mandatory requirements, not merely Congressional suggestions to the Administrator as the other respondents imply (their brief, p. 14). See 42 U.S.C. §1462 (Appx. 54a-56a), authorizing the Administrator to waive these requirements in disaster areas only.

cating businesses in or near such areas, buying or rehabilitating properties, or otherwise.

Further argument cannot be given here; but it seems to petitioners that the Solicitor General is altogether too quick in disposing of this extremely important statutory provision. Standing under this provision has not been litigated in any prior case; nor did the Court of Appeals here clarify its purpose, since the court obviously was proceeding on a much less sophisticated theory of standing than that now offered by the Solicitor General. Petitioners respectfully submit that this issue, so important to urban renewal and the future of the planning profession, is worthy of full argument before this Court.

Relocation. The Solicitor General very properly admits, as was in any case obvious, that the relocation provisions of the Housing Act (Petition p. 8) were intended for the special protection of displaced families; yet still he would deny them standing. This is not merely harsh, as he admits, but goes far beyond this Court's earlier decisions.

Perkins v. *Lukens Steel Co.*, 310 U.S. 113 (1940), cited by the Solicitor General, stands only for the propositions (1) that government purchasing regulations are strictly an internal affair of the executive branch, with which the judiciary cannot interfere, and (2) that, since no one has any vested legal right that the government shall contract with him (or with his employer), he has no right to complain concerning any "prevailing wage" clause which the government may require to be inserted in any such contract.

The present case stands in complete contrast. Here, government is not acting in a proprietary capacity, or affecting merely those who seek the privilege of selling

to it; instead, it is reaching out and seizing the homes of petitioners without their consent.[1] As this Court pointed out in *Berman* v. *Parker*, 348 U.S. 26, 32 (1954), urban renewal is an exercise of the police power; hence the doctrine that the judiciary should not interfere in the internal affairs of the executive branch has no application. Unlike the plaintiffs in the *Perkins* case, petitioners here do have existing legal rights in their homes, rights which yield only to *lawful* exercise of the power of eminent domain.

In suggesting (p. 10) that Congress cannot have intended judicial review under the Housing Act, the Solicitor General completely ignores the fact that this Act was adopted *after* the Administrative Procedure Act, and is therefore subject to the presumption that judicial review was intended unless the contrary is clearly indicated (see cases and legislative history cited in the Petition, p. 22). As to whether urban renewal "lends itself to judicial review", there is all the difference in the world between reviewing the wisdom of a project, which *Berman* v. *Parker* rejected, and seeing to it that specific statutory requirements are observed.

The Solicitor General does not claim (as do the Illinois respondents, p. 16 of their brief) that the holdings of *Gart* v. *Cole*, 263 F.2d 244, 250-1 (C.A.2, 1959), cert. den. 359 U.S. 978 (1959) as to standing are merely dicta; but he seeks to distinguish the relocation claims granted standing there from those of petitioners here by creating

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[1] It is immaterial to the availability of federal judicial review that the local agency is the actual condemnor, and that the federal Administrator does not deal directly with the individual property owners, since he supervises, approves, and subsidizes all that is done by the local agency. See **Frost** v. **Corporation Commission**, 278 U.S. 515 (1929), discussed in **Alabama Power Co.** v. **Ickes**, 302 U.S. 464, 484 (1938).

a distinction between standing to assert procedural violations and standing to assert substantive violations of the Act. This artificial distinction (without which a square conflict between the decision below and *Gart* v. *Cole* is inescapable) stems from nothing in *Gart* v. *Cole*, or in the opinion below, or in any prior decision as to standing. The Solicitor General does not claim otherwise; he offers in support of his brainchild only the extremely distant analogy of two loyalty-security cases, and some reasoning which goes more to scope of review than to standing to secure review.

Petitioners believe that the attempted distinction is wholly without substance, but also that this is not the place to argue the point. They respectfully submit, however, that before this new embellishment is engrafted onto the rococo structure of the federal law of standing, this Court should hear plenary argument.

Public Hearing. The Solicitor General concedes that under the holding of *Gart* v. *Cole*, *supra*, petitioners would have standing to assert the absence of a proper public hearing, but nevertheless suggests certiorari should be denied because petitioners' claim on this point is "frivolous" on the merits. This ties in with his earlier assertion (p. 7) that petitioners' constitutional due-process arguments as to hearings are "insubstantial".

Petitioners deny the accuracy of this categorization, and assert that their contentions are supported by legislative history, authority, and reason—certainly sufficiently to warrant a full hearing by this Court. The point is canvassed at length in the Petition (pp. 9-10, 16, 22-32), and it would be futile to say more here.[1]

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[1] The hardships discussed in the Petition (pp. 29-31) are extensively documented in a scholarly article just published,

Good-Faith Fact-Finding. Equally insubstantial, according to the Solicitor General, is petitioners' claim (Petition p. 9-10) that the Housing Act implicitly requires good-faith fact-finding by the local agency, and that this requirement too was violated.

On this point, the Solicitor General is in error when he states (p. 14) that an open hearing involving this question was held. At the hearing before the Chicago City Council committee—the only uninterrupted hearing held prior to condemnation—no data whatever was presented by the Land Clearance Commission as to what investigation if any it had made of the Roosevelt-Blue Island and Congress-Racine Tracts, and petitioners and other objectors were not permitted to question officers or employees of the Commission. At the condemnation hearing, the trial court expressly denied petitioners any discovery as to the officers and records of the Commission, and refused to admit any testimony as to what kind of investigation the Commission had made (see No. 984, Jurisdictional Statement, pp. 7, 12-13, 20). The fact is that petitioners' charge that the hasty "investigations" made by the Commission here were nothing but a sham

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[1] (Continued)
Glaves, **Date of Valuation in Eminent Domain: Irreverence for Unconstitutional Practice**, 30 U. of Chi. L.R. 319 (1963).

It should be said, anent the Solicitor General's argument (p. 7 n. 1), that **Berman v. Parker**, 348 U.S. 26 (1953), in no sense forecloses petitioners' due process arguments, for the very good reason that no procedural issues relating to hearings or otherwise were raised, argued, or decided there. **Berman v. Parker** is enough of a landmark case for what it did decide; it should not be treated as if it had settled every conceivable question of urban renewal law from now until the end of time (see the other respondents' brief, pp. 4-6).

and a fraud remains to this day uncontradicted by anything in the Record here or in the state-court appeal.

The Housing Act restricts an urban renewal project to "a slum area or a blighted, deteriorated or deteriorating area",[1] which necessarily implies that someone—obviously the local agency—must in good faith investigate whether a proposed project area can in truth be so classified. Congress surely did not intend that local agencies should proceed by guesswork or prejudice, or that they should accommodatingly designate whatever areas might be desired by an influential redeveloper, regardless of the facts. Nor can Congress have intended to rely on possible subsequent review by condemnation courts to make up for the failure of local agencies to investigate before acting. As for the federal Administrator, his duty is plainly to insure that a good-faith investigation is in fact made. Here, petitioners have alleged, both the local agency and the federal Administrator failed in their duty. *Gart* v. *Cole*, as the Solicitor General concedes, gives petitioners standing; hence they should be entitled to a full hearing on this claim.

Minority-Group Housing and Consultation. The Solicitor General has for some reason failed to mention this alleged violation of the HHFA's regulations (Petition, pp. 8-9). Presumably, however, he would not deny that the cited regulation was designed to protect minority residents of project areas. Even if his "substantive-procedural" dichtomoy were accepted, the consultation requirement, at least, would appear to fall on the procedural side, as to which he admits *Gart* v. *Cole* would grant standing.

Petitioners' Other Housing Act Claims. In drawing up their Petition for Certiorari, petitioners found it

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[1] 42 U.S.C. §1460(a), (c)(1), (Appx. 51a-52a).

necessary to select only the most striking of their Housing Act claims for individual treatment; but it was not their intention to, nor did they, waive their other claims in the event certiorari should be granted, or in the event of a possible reversal. (See par. 3 under Questions Presented, Petition p. 2; also p. 8) Actually, any decision as to petitioners' standing to assert their more important claims would undoubtedly be sufficient to determine also their standing as to their remaining claims.

The Brief of the Illinois Respondents.

There is little in the brief of the Illinois respondents that merits reply. Almost completely it avoids meeting the issues raised by petitioners, and instead does battle with a series of convenient strawmen. Moreover, it contains so many factual and legal errors that it can be of no assistance to this Court in deciding whether to grant certiorari. A few of its more flagrant errors:

(1) The statement (pp. 11-12) that petitioners' arguments as to due process and hearings are identical with those rejected in *Grisanti* v. *City of Cleveland*, 179 N.E. 2d 798 (Ohio C.P. 1961), aff'd 181 N.E.2d 299 (Ohio App. 1961), app. dism. 182 N.E.2d 568 (Ohio 1962), app. dism. 371 U.S. 68 (1962). For a refutation of this statement, see 179 N.E.2d at 800, 801, 807; 181 N.E.2d 301, 307; and the Jurisdictional Statement, No. 535, this Term.

(2) The statement (p. 13) that petitioners' Housing Act arguments are identical with those rejected in *Allied-City Wide, Inc.* v. *Cole*, 230 F.2d 827 (C.A.D.C. 1956). Inspection of the briefs in the Court of Appeals shows the falsity of the assertion; see also the related *Bleecker Luncheonette* v. *Wagner*, 141 N.Y.S.2d 293 (Sup.Ct. 1955), aff'd 143 N.Y.S.2d 628 (App. Div. 1955).

(3) The assertion (p. 6) that petitioners' arguments have been rejected in virtually all of the eighty-plus prior cases in the urban renewal field. This is flagrantly untrue, as even the most superficial examination of these cases shows. The great majority stand only for what was established in *Berman v. Parker*, 348 U.S. 26 (1954): the basic constitutionality of slum clearance and the validity of the area approach, neither of which is challenged by petitioners. Barely half a dozen cases deal with claims under the Housing Act, and most of these are easily distinguishable. A few more deal with the right to a hearing, often in contexts very different from that at bar, since different states follow widely divergent procedures in designating urban renewal areas.

(4) The statement (p. 11 n.1) that petitioners' prayer for relief seeks to compel residential redevelopment of the proposed campus area. Petitioners flatly oppose clearance of two of the three tracts; even as to the one already largely cleared, petitioners seek to compel no action, only to forbid illegal action (A. 2095-97).

(5) The assertion (p. 17) that the undisputed facts show that the Housing Act was not violated. The "facts" referred to, highly disputed, are taken from affidavits and exhibits filed by one of the respondents in the district court, most of which are not even in the record before this Court. Although no motion for summary judgment was ever made and the requirements of F.R.C.P. Rule 56 were never met, these respondents seek to have their affidavits as to ultimate facts accepted in contradiction to the well-pleaded allegations of the Amended Complaint. The most that these affidavits actually show, moreover, is that the local agencies *represented* to the HHFA that the Housing Act requirements had been met—representations which petitioners have alleged were false.

CONCLUSION

For the reasons set forth here and in the Petition, this Court should grant the writ.

Respectfully submitted,

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